

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

XINUOS, INC.,

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES
CORP. and RED HAT, INC.,

Defendants.

Case No. 7:22-cv-09777-CS-VR

Judge Cathy S. Seibel

**DECLARATION OF MARK ANZANI IN OPPOSITION TO THE LETTER BRIEF OF
PLAINTIFF XINUOS, INC. REGARDING REQUEST TO COMPEL PRODUCTION OF
DEFENDANTS' SOURCE CODE REPOSITORIES**

I, Mark Anzani, hereby declares as follows:

1. I am an employee of Defendant International Business Machines Corp. (“IBM”).

My current title is Special Projects Executive. I have previously served as the VP for Strategy within the IBM Z division, and held various other executive roles within IBM Z.

2. I submit this declaration in support of Defendants’ letter in opposition to the request submitted by Plaintiff XINUOS, Inc. (“XINUOS”) to the Court on October 9, 2024, for the “full source code repositories” of Defendants’ server operating system products. ECF No. 217. Except as otherwise noted, I make this declaration based upon my knowledge of the facts stated herein, and if called to testify, I could and would testify competently thereto.

3. I understand that XINUOS contends “it would pose little burden—and certainly no *unreasonable* burden—to produce full source code repositories” for AIX, z/OS and IBM i, which are three server operating systems (“OSes”) offered by IBM.

4. That assertion greatly underestimates the burden that would be involved in identifying and collecting the full source code repositories for these products, and in ensuring

that they would be transferred to, and reviewed in, a sufficiently secure environment that protects IBM's proprietary assets.

5. *First*, Xinuos misstates the difficulty of identifying and collecting the full source code repositories for IBM's server OSes. The current versions of these products collectively contain over 200 million lines of code, divided into various components, each representing a sophisticated piece of software. These components include essential functions such as storage management, networking management, security and encryption, libraries of shared functions, services for programming languages, central management facilities, web server controls, hardware configuration management, file system operations, bulk data transfer and communications services. Each of these components is developed and maintained by specialized teams, across multiple versions.

6. Any collection would be complicated by the fact that the source code is distributed across various repositories. For example, z/OS consists of 35 different components, some of which are housed in Github, while others are housed in Rational Team Concept (“RTC”), Configuration Management Version Control (“CMVC”) and other repositories.

7. Therefore, any collection and code extraction would be very burdensome. It would require the involvement of a number of library managers (likely between 5 to 10 for z/OS alone) and considerable time and effort. Code extraction would require an authorized librarian to access a repository and initiate a copying process. Secure storage space and security protocols would need to be set up for the target area for the copy. IBM would need to ensure new code under development, or any trial or test code that does not form part of a formal operating system release, would be excluded from the copying process. And all of this would have to be done across all the components and repositories involved.

8. As part of the copying process, IBM would need to create documentation to specify the code streams within a repository that form part of a specific release, so that whoever reviews the code can navigate the repository to view the correct code module levels. IBM would also need to create documentation to identify which components across the different repositories, in combination, form the entire release level that would be reviewed.

9. Adding further time, cost and complexity to the code-copying process would be the need to ensure that IBM does not violate any confidentiality obligations in producing the code. Operating systems routinely include programming language service content or libraries that are owned by third parties. Any production would require a rigorous and expensive review of the applicable license terms to determine if the disclosure of third party content is even permitted or, if it is, what steps would need to be taken before disclosure.

10. Lastly, because of the size of these code bases, the number of components involved and the number of releases within the lengthy time frame requested, IBM would need to undertake a significant amount of checking and validation of content such that it can be certain it has complied with providing all of the source code requested.

11. *Second*, preparing the source code repositories for production and review would also involve a significant burden. Because certain components of the codebase are housed in older repositories no longer in use outside of IBM, IBM would likely need to dedicate critical resources to creating a unique environment for Xinuos' expert to review the source code and provide training or assistance to the expert to use the environment. Migrating code to a single repository such as Github would not be realistic, as migration of the volumes of code at issue could take months to accomplish and important aspects of the library management, such as change history and metadata, would be lost.

12. Moreover, the repositories requested by Xinuos include some of IBM's most sensitive information, almost all of it highly confidential, proprietary material. Full copies of source code libraries contain decades of intellectual property and trade secrets. These operating systems are also at the core of the information technology operations of government departments, financial institutions and major service industries around the world. Protecting the code is essential to ensuring the security of the client operations who deploy these operating systems and minimizing the risk of inadvertent disclosure of knowledge of how to hack them or control them for nefarious purposes.

13. Accordingly, the code can be hosted only in environments with high levels of security and access control. Creating such an environment would entail an onerous process. The steps involved in creating this environment would at minimum include: (1) identifying a location where the source code copies of the operating systems are to be housed that would be compliant with IBM's requirements for source code protection; (2) reviewing, agreeing to and implementing security controls, including access controls, logging of all access, and a security officer present during times of inspection; (3) vetting of any persons who would be given access to the code; and (4) preparing the encryption necessary to enable the code copies to be viewed. The cost of creating and maintaining such an environment would be substantial, not only in terms of technical resources but also in terms of the legal and security staff required to oversee the process.

14. *Third*, I understand Mr. Schnell has invoked his experience reviewing IBM's source code. But I understand he reviewed source code developed by the IBM Research Center, not source code used in commercial settings, which is subject to a different set of security protocols and is housed in a significantly more fragmented manner.

15. I declare under penalty of perjury that the foregoing is true and correct. Executed on October 16, 2024, in Croton on Hudson, New York.

A handwritten signature in black ink, appearing to read "Mark Anzani", is written over a horizontal line.

Mark Anzani